

House File 2254 - Introduced

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A BILL FOR

1 An Act relating to eminent domain authority and procedures
2 for governmental entities and including effective date and
3 applicability provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **6A.15 Property on state historic**
2 **registry.**

3 1. Property listed on the state register of historic places
4 maintained by the historical division of the department of
5 cultural affairs shall not be removed from the register solely
6 for the purpose of allowing acquisition of the property by
7 condemnation, unless such condemnation is undertaken by the
8 department of transportation.

9 2. Property listed on the state register of historic places
10 maintained by the historical division of the department of
11 cultural affairs shall not be condemned by the state or a
12 political subdivision unless a joint resolution authorizing
13 commencement of the condemnation proceedings is approved by a
14 vote of at least two-thirds of the members of both chambers of
15 the general assembly and signed by the governor. The approval
16 requirements of this subsection shall not apply to condemnation
17 undertaken by the department of transportation.

18 Sec. 2. Section 6A.19, Code 2011, is amended to read as
19 follows:

20 **6A.19 Interpretative clause.**

21 A grant in this chapter of right to take private property
22 for a public use shall not be construed as limiting a like
23 grant elsewhere in the Code for another and different use.
24 Unless specifically provided by law, this chapter shall not
25 be construed to limit or otherwise affect the application of
26 chapters 478 and 479 to the eminent domain authority of the
27 utilities division of the department of commerce.

28 Sec. 3. Section 6A.22, subsection 2, paragraph c,
29 subparagraph (1), Code 2011, is amended to read as follows:

30 (1) (a) If private property is to be condemned for
31 development or creation of a lake, only that number of acres
32 justified as reasonable and necessary for a surface drinking
33 water source, and not otherwise acquired, may be condemned.
34 In addition, the acquiring agency shall conduct a review of
35 prudent and feasible alternatives to provision of a drinking

1 water source prior to making a determination that such
2 lake development or creation is reasonable and necessary.
3 Development or creation of a lake as a surface drinking water
4 source includes all of the following:

- 5 (i) Construction of the dam, including sites for suitable
- 6 borrow material and the auxiliary spillway.
- 7 (ii) The water supply pool.
- 8 (iii) The sediment pool.
- 9 (iv) The flood control pool.
- 10 (v) The floodwater retarding pool.
- 11 (vi) The surrounding area upstream of the dam no higher in
- 12 elevation than the top of the dam's elevation.
- 13 (vii) The appropriate setback distance required by state or
- 14 federal laws and regulations to protect drinking water supply.

15 (b) For purposes of this subparagraph (1), "*number of acres*
16 *justified as reasonable and necessary for a surface drinking*
17 *water source*" means according to guidelines of the United
18 States natural resource conservation service and according to
19 analyses of ~~surface~~ drinking water capacity needs conducted by
20 one or more registered professional engineers. The registered
21 professional engineers may, if appropriate, employ standards
22 or guidelines other than the guidelines of the United States
23 natural resource conservation service when determining the
24 number of acres justified as reasonable and necessary for
25 a surface drinking water source. The data and information
26 used by the registered professional engineers shall include
27 data and information relating to population and commercial
28 enterprise activity for the area from the two most recent
29 federal decennial censuses unless the district court of the
30 county in which the property is situated has determined by
31 a preponderance of the evidence that such data would not
32 accurately predict the population and commercial enterprise
33 activity of the area in the future.

34 (c) A second review or analysis of the drinking water
35 capacity needs shall be performed upon receipt by the acquiring

1 agency of a petition signed by not less than twenty-five
 2 percent of the affected property owners. The registered
 3 professional engineer to perform the second review or analysis
 4 shall be selected by a committee appointed by the affected
 5 property owners and whose membership is comprised of at
 6 least fifty percent property owners affected by the proposed
 7 condemnation action. The acquiring agency shall be responsible
 8 for paying the fees and expenses of such an engineer.

9 (d) If private property is to be condemned for development
 10 or creation of a lake, the plans, analyses, applications,
 11 including any application for funding, and other planning
 12 activities of the acquiring agency shall not include or provide
 13 for the use of the lake for recreational purposes.

14 Sec. 4. Section 6B.54, subsection 10, paragraph a, Code
 15 2011, is amended by adding the following new subparagraph:

16 NEW SUBPARAGRAPH. (3) Reasonable attorney fees and
 17 reasonable costs not to exceed one hundred thousand dollars,
 18 attributable to a determination that the creation of a lake
 19 through condemnation includes a future recreational use or that
 20 a violation of section 6A.22, subsection 2, paragraph "c",
 21 subparagraph (1), subparagraph division (d), has occurred, if
 22 such fees and costs are not otherwise provided under section
 23 6B.33.

24 Sec. 5. NEW SECTION. 6B.56B **Disposition of condemned**
 25 **property — two-year time period.**

26 1. When two years have elapsed since property was condemned
 27 for the creation of a lake according to the requirements of
 28 section 6A.22, subsection 2, paragraph "c", subparagraph (1),
 29 and the property has not been used for or construction has
 30 not progressed substantially from the date the property was
 31 condemned for the purpose stated in the application filed
 32 pursuant to section 6B.3, and the acquiring agency has not
 33 taken action to dispose of the property pursuant to section
 34 6B.56, the acquiring agency shall, within sixty days, adopt a
 35 resolution offering the property for sale to the prior owner

1 at a price as provided in section 6B.56. If the resolution
2 adopted approves an offer of sale to the prior owner, the offer
3 shall be made in writing and mailed by certified mail to the
4 prior owner. The prior owner has one hundred eighty days after
5 the offer is mailed to purchase the property from the acquiring
6 agency.

7 2. If the acquiring agency has not adopted a resolution
8 described in subsection 1 within the sixty-day time period, the
9 prior owner may, in writing, petition the acquiring agency to
10 offer the property for sale to the prior owner at a price as
11 provided in section 6B.56. Within sixty days after receipt of
12 such a petition, the acquiring agency shall adopt a resolution
13 described in subsection 1. If the acquiring agency does not
14 adopt such a resolution within sixty days after receipt of the
15 petition, the acquiring agency is deemed to have offered the
16 property for sale to the prior owner.

17 3. The acquiring agency shall give written notice to the
18 owner of the right to purchase the property under this section
19 at the time damages are paid to the owner.

20 Sec. 6. Section 403.7, subsection 1, unnumbered paragraph
21 1, Code 2011, is amended to read as follows:

22 A municipality shall have the right to acquire by
23 condemnation any interest in real property, including a fee
24 simple title thereto, which it may deem necessary for or in
25 connection with an urban renewal project under this chapter,
26 subject to the limitations on eminent domain authority
27 in ~~chapter~~ chapters 6A and 6B. However, a municipality
28 shall not condemn agricultural land included within an
29 economic development area for any use unless the owner of
30 the agricultural land consents to condemnation or unless the
31 municipality determines that the land is necessary or useful
32 for any of the following:

33 Sec. 7. NEW SECTION. 423B.11 Use of revenues — limitation.

34 The revenue raised by a local sales and services tax imposed
35 under this chapter by a county shall not be expended for any

1 purpose related to a project that includes the condemnation of
2 private property for the creation of a lake according to the
3 requirements of section 6A.22, subsection 2, paragraph "c",
4 subparagraph (1), if the local sales and services tax has not
5 been approved at election in the area where the property to be
6 condemned is located.

7 Sec. 8. Section 455A.5, Code 2011, is amended by adding the
8 following new subsection:

9 NEW SUBSECTION. 7. The authority granted to the commission
10 to acquire real property for purposes of carrying out a
11 duty related to development or maintenance of the recreation
12 resources of the state, including planning, acquisition, and
13 development of recreational projects, and areas and facilities
14 related to such projects, shall not include the authority to
15 acquire real property by eminent domain.

16 Sec. 9. Section 456A.24, subsection 2, unnumbered paragraph
17 1, Code 2011, is amended to read as follows:

18 Acquire by purchase, ~~condemnation~~, lease, agreement,
19 gift, and devise lands or waters suitable for the purposes
20 hereinafter enumerated, and rights-of-way thereto, and to
21 maintain the same for the following purposes, ~~to wit~~:

22 Sec. 10. Section 456A.24, Code 2011, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 15. The authority granted the department
25 to acquire real property for any statutory purpose relating to
26 the development or maintenance of the recreation resources of
27 the state, including planning, acquisition, and development
28 of recreational projects, and areas and facilities related to
29 such projects, shall not include the authority to acquire real
30 property by eminent domain.

31 Sec. 11. Section 461A.7, Code 2011, is amended to read as
32 follows:

33 **461A.7 Eminent-domain Purchase of lands — public parks.**

34 The commission may purchase ~~or condemn~~ lands from willing
35 sellers for public parks. ~~No~~ A contract for the purchase of

1 such public parks shall not be made to an amount in excess of
2 funds appropriated therefor by the general assembly.

3 Sec. 12. Section 461A.10, Code 2011, is amended to read as
4 follows:

5 **461A.10 Title to lands.**

6 The title to all lands purchased, ~~condemned~~, or donated,
7 hereunder, for park ~~or highway~~ purposes and the title to all
8 lands purchased, condemned, or donated hereunder for highway
9 purposes, shall be taken in the name of the state and if
10 thereafter it shall be deemed advisable to sell any portion of
11 the land so purchased or condemned, the proceeds of such sale
12 shall be placed to the credit of the ~~said~~ public state parks
13 fund to be used for such park purposes.

14 Sec. 13. Section 463C.8, subsection 1, paragraph k, Code
15 2011, is amended to read as follows:

16 k. The power to acquire, own, hold, administer, and dispose
17 of property, except that such power is not a grant of authority
18 to acquire property by eminent domain.

19 Sec. 14. REPEAL. Sections 461A.9 and 461A.75, Code 2011,
20 are repealed.

21 Sec. 15. EFFECTIVE UPON ENACTMENT AND APPLICABILITY. This
22 Act, being deemed of immediate importance, takes effect upon
23 enactment and applies to projects or condemnation proceedings
24 pending or commenced on or after that date.

25 EXPLANATION

26 This bill makes changes relating to eminent domain authority
27 and procedures for governmental entities.

28 The bill provides that property listed on the state register
29 of historic places shall not be removed from the register
30 solely for the purpose of allowing the property to be acquired
31 by condemnation unless the condemnation is undertaken by
32 the department of transportation. The bill also provides
33 that property on the state register of historic places may
34 not be condemned unless a joint resolution authorizing the
35 condemnation is approved by a vote of at least two-thirds

1 of each house of the general assembly and signed by the
2 governor. This approval procedure, however, does not apply to
3 a condemnation undertaken by the department of transportation.

4 The bill specifies that Code chapter 6A, unless specifically
5 provided by law, is not to be construed to limit or otherwise
6 affect the application of Code chapters 478 and 479 to the
7 eminent domain authority of the utilities division of the
8 department of commerce.

9 The bill makes changes relating to eminent domain authority
10 in relation to development or creation of a lake. The bill
11 provides that when determining the number of acres justified as
12 reasonable and necessary for a surface drinking water source,
13 the registered professional engineers may, if appropriate,
14 employ standards or guidelines other than the guidelines of
15 the United States natural resource conservation service. The
16 bill requires the data and information used by the registered
17 professional engineers to include data and information relating
18 to population and commercial enterprise activity for the area
19 from the two most recent federal decennial censuses unless the
20 district court of the county in which the property is situated
21 has determined by a preponderance of the evidence that such
22 data would not accurately predict the population and commercial
23 enterprise activity of the area in the future.

24 The bill also provides that a second review or analysis
25 of the drinking water capacity needs shall be performed upon
26 receipt by the acquiring agency of a petition signed by not
27 less than 25 percent of the affected property owners. The
28 registered professional engineer to perform the second review
29 or analysis shall be selected by a committee appointed by the
30 affected property owners and comprised of at least 50 percent
31 property owners affected by the proposed condemnation action.

32 The bill further provides that the acquiring agency shall
33 pay for the services of such an engineer. The bill provides
34 that if private property is to be condemned for development
35 or creation of a lake, the plans, analyses, applications,

1 including any application for funding, and other planning
2 activities of the acquiring agency shall not include or provide
3 for the use of the lake for recreational purposes.

4 The bill adds reasonable attorney fees and reasonable costs
5 that are attributable to certain condemnation proceedings
6 relating to the creation of a lake, up to \$100,000, to the list
7 of expenses reimbursable by an acquiring agency to a property
8 owner.

9 The bill provides that when two years have elapsed since
10 property was condemned for the creation of a lake and the
11 property has not been used for or construction has not
12 progressed substantially for the purpose stated in the
13 application, and the acquiring agency has not taken action to
14 dispose of the property pursuant to Code section 6B.56, the
15 acquiring agency shall, within 60 days, adopt a resolution
16 offering the property for sale to the prior owner at a price
17 as provided in Code section 6B.56. If the acquiring agency
18 has not adopted a resolution within the 60-day time period,
19 the prior owner may petition the acquiring agency to offer the
20 property for sale to the prior owner at a price as provided in
21 Code section 6B.56. The bill requires the acquiring agency to
22 give written notice to the owner at the time damages are paid
23 to the owner of the right to purchase the property under such
24 circumstances.

25 The bill provides that the revenue raised by a local sales
26 and services tax imposed under Code chapter 423B by a county
27 shall not be expended for any purpose related to a project
28 that includes the condemnation of private property for the
29 creation of a lake if the local sales and services tax has not
30 been approved at election in the area where the property to be
31 condemned is located.

32 The bill specifies that a municipality exercising eminent
33 domain authority in an urban renewal area is subject to the
34 limitations contained in Code chapter 6B, as well as Code
35 chapter 6A.

1 The bill provides that the department of natural resources
2 and the natural resource commission shall not exercise eminent
3 domain authority to acquire real property for purposes of
4 carrying out a duty related to development or maintenance of
5 the recreation resources of the state, including planning,
6 acquisition, and development of recreational projects, and
7 areas and facilities related to such projects. The bill
8 retains the department's authority to acquire property through
9 condemnation for highway purposes.

10 The bill takes effect upon enactment and applies to projects
11 or condemnation proceedings pending or commenced on or after
12 that date.